IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9275 of 1997
With
SPECIAL CIVIL APPLICATION No. 9276 of 1997
With
SPECIAL CIVIL APPLICATION No. 9277 of 1997

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AN PUNIWALA - Petitioner(s)
Versus
BANK OF INDIA & 2 - Respondent(s)

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Appearance :
MR NK MAJMUDAR for Petitioner(s) : 1,
NANAVATI ASSOCIATES for Respondent(s) : 1 - 2.
None for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 25/04/2007

COMMON ORAL JUDGMENT

1. As in all the three petitions common question of law and facts arise they are being disposed of

by this common judgment and order. It is required to be noted that all the three petitions were heard by this Court together on 18th April, 2007 and they were adjourned to 25th April, 2007 at the instance of the learned advocate appearing for the respondent bank, however, by mistake Special Civil Application Nos. 9275 of 1997 and 9276 of 1997 were adjourned to 2nd May, 2007 and only Special Civil Application No. 9277 of 1997 was notified on Board on 25th April, 2007. Considering the fact that in all the three petitions the common question of law and facts arises and were also heard earlier together, this Court has called for the papers of Special Civil Application Nos. 9275 of 1997 and 9276 of 1997 from the Registry and thus, even the aforesaid two Special Civil Applications are also heard, decided and disposed of together by this common judgment and order.

2. By way of all these three Special Civil Applications, the respective petitioners have prayed for an appropriate writ, direction and/or

order directing the respondents to pay full pension to the petitioners from the date of their retirement by declaring the decision of the respondents to pay only 75% of the pension to the respective petitioners as illegal, arbitrary, null and void.

3. All the three petitioners were serving in the respondent No.1 – bank and departmental inquiries were initiated against them and they were suspended. That after full fledged inquiries, a major penalty of compulsory retirement from the bank's services was imposed upon the respective petitioners as provided in Regulation – 4 (f) of the Bank of India Officers Employees' (Discipline & Appeal) Regulation; 1976. The said order was passed on 31st December, 1996. It appears that by order dated 18th October, 1997, the respective petitioners were paid arrears of their pension. It is the case on behalf of the respective petitioners that they were entitled to basic pension of Rs.4825/- per month, however, they were paid only a sum of Rs.3619/- per month as basic pension and

therefore, they were deprived of a sum of Rs.1206/- in their basic pension, which comes to 25% of their basic pension. It is the case on behalf of the respective petitioners that by representation dated 27th October, 1997 they requested the respondent No.3 to pay them full pension and they accepted the pension paid to them under protest as they were in need of money. It is the case on behalf of the respective petitioners that no decision has been taken on their representation and 25% of the pension has been withheld exercising the powers under Regulation – 33 of the Bank of India (Employees') Pension Regulations; 1995 and therefore, they have preferred the present Special Civil Applications for the aforesaid reliefs.

4. Shri Suthar, learned advocate appearing for the respective petitioners has submitted that the impugned action of the respondents in withholding 25% of the pension is absolutely illegal and against the principles of natural justice. It is submitted that before withholding

25% of the pension, no opportunity of being heard has been given to the petitioners. It is further submitted that in fact, before taking a decision of withholding of 25% of the pension as provided under Regulation – 33 of the Pension Rules, Board of Directors were not consulted. It is also further submitted by him that even the appellate authority before whom the order of compulsory retirement was passed, also recommended to pay full pension, still 25% of the pension has been withheld. It is also further submitted that in the facts and circumstances of the case, withholding of 25% of the pension is not warranted and therefore, it is requested to allow the present Special Civil Applications directing the respondents to pay full pension to the respective petitioners.

5. Shri Prabhav Mehta, learned advocate appearing for the respondent bank has submitted that considering the provisions of Regulation – 33, before withholding of the pension under Regulation – 33, no notice is provided and/or no opportunity of hearing is required to be given

and therefore, the impugned action of withholding 25% of the pension cannot be said to be contrary to the Pension Rules and/or against the principle of natural justice. Shri Mehta, has further submitted that order of punishment of compulsory retirement has been accepted by the respective petitioners and therefore, withholding of 25% of the pension is a consequential action and it is a part of the order of punishment along with the order of compulsory retirement and therefore, a separate notice and/or hearing is not contemplated and/or is not required to be given. It is also further submitted that the action of the respondents withholding 25% of the pension, is not a distinct proceeding and it is a consequence of the order of compulsory retirement by way of punishment and both the process are not severable and at every stage, while passing the order of compulsory retirement opportunity has been afforded to the delinquent employees and therefore, it is requested to dismiss the present Special Civil Applications.

6. Shri Mehta, learned advocate appearing for the respondent bank has relied upon the judgment of the Hon'ble Supreme Court in case of ***Aligarh Muslim University & Others V/s. Mansoor Ali Khan*** reported in **(2000) 7 SCC 529** and has submitted that before making the complaint for principles of natural justice, the petitioners must show the prejudice caused to them and as withholding of the pension to the extent of 25% is consequential action of the order of compulsory retirement, no prejudice has been caused to the petitioners as at every stage while passing the order of compulsory retirement, opportunity has been afforded to the delinquent employees and therefore also it is requested to dismiss the present Special Civil Applications.

7. Shri Suthar, learned advocate appearing for the respective petitioners has submitted while relying upon the judgment of the Hon'ble Supreme Court in case of ***Mangilal V/s. State of M.P.*** reported in **(2004) 2 SCC 447** that it is held by the Hon'ble Supreme Court that even if a statute is silent and there are no positive words in the

Act or the Rules made thereunder, where there is a discretion vested with the authority and by giving opportunity, if another view is possible, the principles of natural justice may be read into and the opportunity is required to be given. He has relied upon the decision of the Hon'ble Supreme Court in case of ***Dr Rash Lal Yadav V/s. State of Bihar & Others*** reported in **(1994) 5 SCC 267**; and in case of ***Suresh Chandra Nanhorya V/s. Rajendra Rajak & Others*** reported in **(2006) 7 SCC 800**, in support of his submission that before withholding of 25% of the pension, petitioners must have been given the opportunity of being heard.

8. Heard the learned advocates appearing for the respective parties.

9. At the outset it is required to be noted that disciplinary proceedings were initiated against the respective petitioners under the provisions of the Bank of India Officers Employees' (Discipline & Appeal) Regulation; 1976. The order of penalty of compulsory retirement from

the bank's services was imposed upon the respective petitioners as provided under Regulation – 4 (f) of the Discipline & Appeal Rules. The order of compulsory retirement has not been challenged by any of the petitioners. Considering Regulation – 33 of the Bank of India (Employees') Pension Regulation; 1995, the respondents have passed an order and/or have taken the action of withholding of 25% of the pension. It is required to be noted at this stage that penalty of compulsory retirement is imposed under the Discipline & Appeal Rules while action of withholding of 25% of the pension is taken under the provisions of the Pension Regulation; 1995. Thus, both the actions i.e. imposing the penalty of compulsory retirement and withholding of 25% of the pension are under different Rules and Regulations. One is under Discipline & Appeal Rules and another is under Pension Regulations: 1995. Under the circumstances, the contention of the learned advocate appearing for the respondent bank that the action of the respondent bank in withholding of 25% of the pension is part of discipline proceedings and is not severable and while

imposing the penalty of compulsory retirement at every stage, opportunity has been afforded and therefore no further opportunity is required to be given while withholding 25% of the pension cannot be accepted. At this stage, some of the averments in the affidavit in reply filed on behalf of the respondent bank are also required to be considered. In paragraph – 14 of the affidavit in reply, it is submitted that ***"respondents state that disciplinary proceedings were initiated under the provisions of Bank of India Officer Employees' (Discipline & Appeal) Regulations and disciplinary action proceeding under the provisions of the said regulations has no reason / point whatsoever to refer in any manner whatsoever in respect of payment of pension as competent authority to sanction pension and payment of pension is different under the Bank of India (Employees') Pension Regulations; 1985."*** Even dealing with the contention on behalf of the petitioners that the appellate authority before whom the order of compulsory retirement was challenged has also opined and/or observed that the petitioners be

paid full pension, it is submitted by the respondents in affidavit in reply that it is not incumbent upon the competent authority under the Pension Rules to accept anyone or all recommendations made by the appellate authority. Thus, even according to the respondents in affidavit in reply, the competent authority under the Pension Rules is different than the disciplinary authority and the appellate authority.

10. Now so far as the contention on behalf of the respondents that as under Regulation – 33 of the Pension Regulations, notice and/or hearing is not provided and therefore, opportunity of hearing is not required to be given is concerned, it is required to be noted that Regulation – 33 of the Pension Rules provides that an employee compulsorily retired from service as a penalty may be granted pension at a rate not less than two thirds and not more than full pension admissible to him on the date of his compulsory retirement, even otherwise, they were entitled to such pension on superannuation

on that date. The Regulation – 33 reads as under:-

"33. Compulsory Retirement Pension.-

(1) An employee compulsorily retired from service as a penalty on or after 1st day of November, 1993 in terms of Discipline and Appeal Regulations or settlement by the authority higher than the authority competent to impose such penalty may be granted pension at a rate not less than two – thirds and not more than full pension admissible to him on the date of his compulsory retirement if otherwise he was entitled to such pension or superannuation on that date.

(2) Whenever in the case of a bank employee the Competent Authority passes an order (whether original, appellate or in exercise of power of review) awarding a pension less than the full compensation pension admissible under these regulations, the Board of Directors shall be consulted before such order is passed.

(3) A pension granted or awarded under sub-regulation (I) or, as the case may be, under sub-regulation (2), shall not be less than the amount of rupees three hundred and seventy five per mensem."

11. Now, considering Regulation – 33, it gives authority to the competent authority to withheld pension upto 25% and thus, discretion is vested with the authority to pay pension at a rate not less than two thirds and not more than full pension meaning thereby, the authority can withheld the pension upto 25%. Thus, in an appropriate case, the authority can withheld pension upto 5%, in an appropriate case upto 10%, in an appropriate case upto 20% and maximum upto 25%. When the discretion is given to the authority, in that case, if the opportunity of being heard is given to the concerned employee, in that case, the concerned employee can satisfy the authority that in a given case order of withholding of the pension of 25% is not warranted and that only 5% of the pension may be withheld and/or less than 25% of

the pension may be withheld. There is another reason also why in such a situation hearing is required to be given. When the discretion is given see that such discretion is not exercised arbitrarily and is exercised judiciously, the fair play requires that an opportunity of hearing is required to be given.

12. In case of ***Mangilal*** (supra), the Hon'ble Supreme Court in paragraph – 10 has observed as under :-

> ***"10. Even if a statute is silent and there are no positive words in the Act or the Rules made thereunder, there could be nothing wrong in spelling out the need to hear the parties whose rights and interest are likely to be affected by the orders that may be passed, and making it a requirement to follow a fair procedure before taking a decision, unless the statute provides otherwise. The principles of natural justice must be read into unoccupied interstices of the statute, unless there is a clear mandate to the contrary. No form or procedure should ever be permitted to exclude the presentation of a litigant's defence or***

stand. Even in the absence of a provision in procedural laws, power inheres in every tribunal/court of a judicial or quasi-judicial character, to adopt modalities necessary to achieve requirements of natural justice and fair play to ensure better and proper discharge of their duties. Procedure is mainly grounded on the principles of natural justice irrespective of the extend of its application by express provision in that regard in a given situation. It has always been a cherished principle. Where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice where substantial rights of parties are considerably affected. The application of natural justice becomes presumptive, unless found excluded by express words of statute or necessary intendment. (See Swadeshi Cotton Mills v. Union of India.) Its aim is to secure justice or to prevent miscarriage of justice. Principles of natural justice do not supplant the law, but supplement it. These rules operate only in areas not covered by any law validly made. They are a means to an end and not an end in

themselves. The principles of natural justice have many facets. Two of them are; notice of the case to be met, and opportunity to explain"

13.In case of ***Dr. Rash Lal Yadav V/s. State of Bihar & Others*** reported in (**1994) 5 SCC 267,** the Hon'ble Supreme Court has observed that where a statute confers wide powers on an administrative authority coupled with wide discretion, the possibility of its arbitrary use can be controlled or checked by insisting on their being exercised in a manner which can be said to be procedurally fair. It is observed that Rules of natural justice are, therefore, devised for ensuring fairness and promoting satisfactory decision making.

14.In case of ***Suresh Chandra Nanhorya V/s. Rajendra Rajak & Others*** reported in ***(2006) 7 SCC 800,*** the Hon'ble Supreme Court has observed that natural justice is inseparable ingredient of fairness and reasonableness. It is observed that it is even said that the principles of natural

justice must be read into unoccupied interstices of statute, unless there is a clear mandate to the contrary. It is also further observed by the Hon'ble Supreme Court that natural justice is the essence of fair adjudication, deeply rooted in tradition and conscience, to be ranked as fundamental. The purpose of following the principles of natural justice is the prevention of miscarriage of justice.

15. Now, considering the facts of the case on hand and the relevant Regulation – 33 of the Pension Rules under which 25% of the pension of the petitioners have been withheld and considering the fact that it confers discretion upon the authority to withhold pension upto 25% and withholding of the pension can be said to be a civil consequence, the principles of natural justice must be read into the said regulation. If the opportunity would have been given to the respective petitioners before withholding of 25% of the pension, in that case, considering the discretion of the authority to withhold the pension upto 25%, the concerned employee could

have represented to the authority and satisfied the authority that it is not a case where maximum 25% of the pension is required to be withheld. Thus, in view of the fact that discretion is vested with the authority to withhold pension upto 25% fair play required and that the authority exercises the jurisdiction judiciously the principle of natural justice must be read into the said regulation. Under the circumstances, as the action of the respondents in withholding 25% of the pension is without giving an opportunity to the petitioners, the same is in breach of principles of natural justice and requires to be quashed and set aside.

16. The contention on behalf of the respondent bank is that at the time of imposing penalty of compulsory retirement at every stage, opportunity was given and withholding of 25% of the pension is consequential action of compulsory retirement no further opportunity is required to be given is concerned, it is required to be noted that as such both the

actions are independent and under different Rules / Regulations. One is under the Discipline & Appeal Rules and another is under the Pension Rules; 1995. Even it is the case on behalf of the respondent bank in the affidavit in reply, as stated above that it is not incumbent upon the competent authority under the Pension Rules to consider the observation and/or the order of the appellate authority, as both are under different regulations. It is also required to be noted at this stage that it is an admitted position that no notice has been served upon the respective petitioners calling upon them to show cause as to why pension upto 25% should not be withheld. Under the circumstance, the contention on behalf of the respondent bank that as while imposing the penalty of compulsory retirement opportunity was given and withholding of the pension upto 25% is consequential action and therefore, hearing is not required, cannot be accepted. Even the contention on behalf of the respondent bank that withholding of 25% of the pension is a part of the disciplinary proceedings also cannot be accepted as the order of compulsory retirement is passed under the

provisions of the Discipline & Appeal Rules and the order of withholding of 25% of the pension is passed under the Pension Rules. Under the circumstances, the impugned action of the respondents in withholding of 25% of the pension is required to be quashed and set aside as it is in breach of principles of natural justice.

17. For the reasons stated above, all the petitions succeed and the impugned action of the respondents in withholding of 25% of the pension on passing the order of compulsory retirement are hereby quashed and set aside. It goes without saying that as the impugned actions are set aside only on the ground that they are in breach of principles of natural justice, it is always open for the respondent bank to pass an appropriate order in accordance with law and on merits after giving an opportunity to the respective petitioners. Rule is made absolute to the aforesaid extent in each of the petition, however, there shall be no order as to costs.

[M.R.Shah, J.]

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